

Paring Down That \$500,000,000 Loss From Sickness

One Thing the Governor Asked For and May Get-- Health Insurance

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THE outstanding development in the field of social legislation in recent years has been the rapid spread of the workmen's compensation movement and the striking feature in the immediate future is the possible enactment of health insurance legislation. When a movement of this kind once gets under way it spreads with astonishing rapidity. A certain period of educational preparation is always necessary to break the path for legislation. This work of educational propaganda has now been pretty thoroughly done in the case of health insurance, and the place of legislative accomplishment is at hand. The same social forces and conditions that brought about the enactment of workmen's compensation laws in thirty-eight states and three territories within the short period of eight years are now behind the movement for health insurance. The success of this movement in the near future seems, therefore, to be a practical certainty.

In his inaugural address to the Legislature Governor Smith recommended as a needed measure of social reconstruction the enactment of a health insurance law, including provision for maternity insurance. "Nothing is so devastating in the life of the worker's family as sickness," Governor Smith declared. "The incapacity of the wage worker because of illness is one of the underlying causes of poverty. Now, the worker and his family bear this burden alone. The enactment of a health insurance law, which I strongly urge, will remedy this unfair condition. Moreover, it will result in greater precautions being taken to prevent illness and disease, and to eliminate the consequent waste to the state therefrom. It will lead to the adoption of wider measures of public health and hygiene and it will operate to conserve human life. The large percentage of physical disability disclosed by the draft shows how deeply concerned the state is in this matter. Proper provision also should be made for maternity insurance in the interest of posterity and of the race."

The beginning of the movement for health insurance in this country may be traced back to December, 1912, when a committee of the American Association for Labor Legislation was appointed to study the question and draft legislation. In 1914 a bill prepared by this committee was introduced in the legislatures of three states, New York, Massachusetts and New Jersey. In 1917 the bill was introduced in twelve state legislatures, and as a result, eight state investigating commissions were appointed. Three of these commissions, in California, New Jersey and Massachusetts, have already reported in favor of health insurance legislation, and the other commissions will probably report at the coming legislative sessions. In 1918 a modified bill was introduced in New York State with the support of the State Federation of Labor, certain changes having been made in the draft proposed by the committee of the American Association for Labor Legislation to meet objections to this measure on the part of organized labor. This bill was heard in committee, but not reported. This year, the same bill, with a few minor changes, will be introduced again at the request of the State Federation of Labor, which at its convention in 1918 voted 300 to 1 in favor of health insurance legislation. The measure will also have the support of other organizations, including, in addition to the American Association for Labor Legislation, the National Consumers' League, the New York State Federation of Women's Clubs, the Women's Trade Union League, the New York Suffrage Association and the Young Women's Christian Association. With the urgent recommendation of the Governor and the support of these organizations behind it, the measure will necessarily command the serious attention of the Legislature.

The health insurance provided by this bill is to cover all employees in the state; that is, it is universal and compulsory. The benefits include necessary medical, surgical and nursing care for employees and dependent members of their families, and cash benefits on the scale of two-thirds of wages during disability for a maximum period of twenty-six weeks yearly, with maximum and minimum limits of \$8 and \$5 a week respectively. The bill also provides for maternity benefits equal to the regular cash benefits for sickness, payable for a period of eight weeks, of which at least six shall be subsequent to childbirth. Finally, provision is made for funeral benefits at the rate of \$100. The funds to provide these benefits are to be contributed jointly by employer and employee in equal proportions, but for employees earning less than \$8, but more than \$5, the contributions are in proportions of three-quarters by the employer and one-quarter by the employee, and in case the weekly earnings of an employee are \$5 or less, the contributions are borne entirely by the employer. This division of the cost between the employer and the employee is justified on the ground that the responsibility for sickness falls upon both parties—the sanitary conditions in home and in factory alike being contributory factors—and that the joint contributions will serve to bring home this responsibility and promote precautionary and preventive measures on both sides. The insurance is to be administered by local funds, each having a board of directors of not more than seven, consisting of an equal number of employers and of employees,

with one additional director to be chosen by majority vote. The administration of the entire plan, including the insurance funds, is placed in the hands of the State Industrial Commission.

The need of a comprehensive scheme of health insurance must be admitted by any one who has given thoughtful attention to the problem of sickness among working people. Official estimates of the extent of the annual loss on account of sickness in this country place the wage loss at approximately five hundred million dollars and the expenses of medical treatment and supplies at approximately one hundred and eighty million dollars. It is estimated that the amount of dependency due to sickness is seven times as great as that due to accidents. At present this burden of loss falls in each case upon the individual worker. It is now proposed that the principle of insurance shall be applied here, with the twofold object of distributing the burden of loss equitably and of reducing the amount of the loss itself.

Five Hundred Million Lost in Sickness

The essence of insurance is simply the distribution among a number of persons of a volume of loss which, if borne individually, would in many cases be overwhelming, but which can be borne collectively with comparative ease. This insurance principle has been applied widely in the field of business, but hitherto, as Professor Irving Fisher has pointed out, it has been utilized only to a very slight extent for the purpose of relieving the hazards and hardships of the workers. "The well to do," says Professor Fisher, "have long made use of it in fire insurance, life insurance, fidelity insurance, plate glass insurance, steam boiler insurance, and, to some extent, accident and health insurance. The capitalist has long endeavored to eliminate, or at least to reduce, every determinable risk. But the curious and melancholy fact is that outside of workmen's compensation the poor in this country have received, as yet, very little benefit from the application of the insurance principle. Yet it is the poor whose need of health insurance is greatest, and for two important reasons. One is that the worker is more likely to lose his health than the capitalist. . . . The other reason is that any loss from sickness is a far more vital matter to the poor than to the rich."

The application of the insurance principle to effect an equitable and tolerable distribution of the industrial sickness loss will accomplish the secondary object of reducing the amount of this loss. Just as the spread of fire insurance has operated to promote fire prevention, and that of accident insurance to encourage accident prevention, so the introduction of health

insurance will stimulate sickness prevention and health conservation. The application of the insurance principle in any field at once directs attention to the cost of the hazard or loss covered by insurance, and thus furnishes a direct incentive to reduce the amount of such hazard or loss.

Compulsion a Prime Necessity

In applying the insurance principle in the field of health insurance, compulsion is an absolute requisite to the attainment of the desired end. The necessity for compulsion has been tersely stated by the secretary of a State Federation of Labor in these words: "Health insurance must be compulsory if all the employers owning dirty factories are to pay their share. It must be compulsory if all wage earners in need of health insurance are to receive its benefits." The experience with voluntary agencies of insurance has taught the lesson that persons most in need of insurance protection either can not or will not avail themselves in any considerable number of any voluntary insurance device. The idea of compulsion is naturally distasteful to the American worker, and opposition to health insurance has been aroused in some labor circles on this account. But there can be no reasonable or logical opposition to the proposed form of compulsion when rightly understood. In the field of education the compulsory principle has been applied to protect society against the menace of illiteracy; in the field of sanitation it has been applied as a protective measure against disease; in the field of social insurance its application is clearly justified as a means of protecting society against the burden of accident, sickness, invalidity and dependency. The use of compulsion for such ends cannot be fairly stigmatized as un-American, As Professor Fisher puts it:

"According to the logic of those now shedding crocodile tears over health insurance we ought, in order to remain truly American and truly free, to retain the precious liberties of our people to be illiterate, to be drunk, and to suffer accidents without indemnification, as well as to be sick without indemnification. In fact, if compulsory health insurance is tyranny, all labor laws, all tenement laws, all health laws, all pure food laws, even all laws, are tyranny. In fact, all laws are an interference with some one's liberty, even laws against vice and crime. It is the nature of the law to restrict. But it is by the compelling hand of the law that society secures liberation from the evils of crime, vice, ignorance, accidents, unemployment, invalidity and disease."

The main objections to the programme of health insurance, aside from the mistaken protest against the use of compulsion, may be reduced to the contention that it would encourage malingering and thus increase the amount of the industrial time loss on account of sickness. Attention is called to the fact that in European countries which have adopted sickness insurance on a large scale the average number of days lost through sickness has increased. We are told that in Germany the average number of days lost per insured person arose from 5.9 in 1885, when the sickness insurance laws had just gone into effect, to 9.19 in 1915, and that in Austria the number increased from 7.98 in 1890 to 9.45 in 1913. This rise in the sickness curve in Germany and Austria has been interpreted as reflecting "a growing tendency to malingering and take advantage of the sick-benefits provided." This interpretation is open to

challenge. The increase of the average number of days lost through sickness cannot be regarded as necessarily indicating the loss of industrial efficiency and productive power for the working population as a whole. Indeed, the fact that more time on the average has been lost, ostensibly, on account of sickness may indicate that the workers have been enabled through the facilities for insurance to take the time from work really needed in order to effect thorough cure of occasional ailments and thus to enhance their working power in the long run. It may be contended, in short, that while health insurance may result in a slight increase of the amount of time lost through illness, it raises the level of health and efficiency for the workers as a whole. In this connection it may be pointed out that the tendency to prolongation of sickness periods is not peculiar to state health insurance; precisely the same tendency is observable under private health insurance. This tendency, in general, must be regarded as natural and beneficial.

Furthermore, any unwholesome tendency in this direction is undoubtedly offset and outweighed greatly by the powerful stimulus to sickness prevention and health conservation which a well organized plan of insurance brings to bear both upon the employer and upon the employee. The opponents of health insurance emphasize the importance of prevention as an alternative to indemnification in dealing with the problem of industrial sickness. But these two are not alternative; they are correlative. That is, indemnification provided through health insurance leads to prevention. This relation of cause and effect has been demonstrated clearly in the case of workmen's compensation insurance. The enactment of workmen's compensation laws by bringing home to the employer the magnitude of the loss through industrial accidents furnished an effective incentive to prevent accidents by adopting all practicable measures for the protection of life and limb of the workers. It gave a tremendous impetus to the "Safety First" movement. Similarly, the institution of health insurance would unquestionably promote a widespread movement among employers to prevent sickness and to conserve health among the workers. It would popularize a new slogan, "Health First." This stimulus to prevention and conservation would be felt by the employee, as well as by the employer. Just as the latter would be stimulated to provide better sanitary conditions in his plant, so the former would be incited to give more attention to personal hygiene and domestic sanitation. It cannot be doubted that the permanent effect of health insurance would thus be to reduce the volume of industrial sickness loss and to heighten the efficiency of the national labor force.

Still Opposed By Some

The project of health insurance is, of course, obnoxious to persons who cling blindly to the old, conservative, individualistic ideal. As a solution to the problem of workmen's insurance, this ideal offers merely the gospel of thrift supplemented by the advocacy of a living wage. That is, the solution of the problem is found in the payment of an adequate living wage to every worker—adequate not only for the comfortable maintenance of the individual and family, but also for provision against all emergencies of life, including accident, sickness, unemployment, invalidity and old age—and the practice on the part of each

worker of the virtue of thrift to make such provision through individual saving unaided by any contributions from employer or state. This ideal is attractive in theory, for it promises a strong society made up of free men cooperating under contract to use the phrase of that stalwart individualist, the late Professor William Graham Sumner. But the ideal is not attainable in practice, and offers no workable solution of the problem of health insurance under existing economic and social conditions.

In the first place, economic conditions make adequate saving for the great mass of the working population an utter impossibility. In general, economic pressure tends to keep wages below the level of a fully adequate living wage—that is, adequate for maintenance with a sufficient margin for saving. This pressure makes itself felt with particular severity in any period of advancing prices and rising cost of living. It is an economic axiom that the rate of wages rises more slowly and in a less degree than the prices of the commodities that wages must purchase. For over twenty years the cost of living has been rising in all industrial countries, almost steadily, and, in the recent period, very sharply. There can be no doubt that the advance will continue for the visibly distant future, as the main causes that brought it about will still continue to operate. With this outlook it is idle to expect that wages, in general, can be raised to a level that will offer a margin for saving, to provide properly for sickness and other emergencies in the life of the worker. The gospel of thrift addressed to workers confronted by this concrete condition loses its compelling appeal. It will hardly be accepted as the sole solvent of the ills that beset labor.

On the part of employers there will doubtless develop a growing disposition to fall into line with the movement for social insurance in consequence of the new necessity for conserving the labor force which arises from war conditions. The war has made labor scarce and dear, and has thus furnished a strong incentive for its conservation. In proportion as it becomes more difficult to secure and retain an adequate supply of efficient labor it becomes increasingly urgent to conserve the labor supply by conserving human life. This consideration affords good reason for predicting that health insurance will win favor with employers in the reconstruction period.

New Ideal Of Service

The war has also brought profound changes in American conceptions of the reciprocal relation of the individual and the state, which cannot fail to add impetus to the movement for social insurance in general.

A new ideal of service has grown up during the war. Altruistic motives have come into play as never before. Men and women have heard the call to give unreservedly their resources and their energies, not for self and family alone, but for the state and humanity. With the duty of service on the part of the individual goes hand in hand the duty of the state to render fair reward for loyal service. This must include provision for protecting the individual against the hazards and hardships imposed by service.

Closely connected with this new conception of service there has developed a new conception of the state. The activities of the state have been enormously extended in consequence of the war. Government has transcended the narrow sphere formerly

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assigned to it and has taken upon itself a wide range of economic and social functions. The people have got used to seeing the state do many things which individuals used to be expected to do for themselves. The spectacle of government concerning itself intimately with the industries and the welfare of the people has become familiar. All this tends to make supporters for projects of social insurance.

A concrete illustration is furnished by the government plan of war risk insurance. Under this plan the government has provided for enlisted men separation allowances for their families, disability and death benefits, and life insurance at net cost.

The state has recognized and discharged the obligation to protect men in the military and naval service against the peculiar hazards of that service. The example of government war risk insurance will surely prove contagious. Men who have enjoyed the benefits of a state insurance scheme in time of war are pretty sure to ask for its continuance and extension in time of peace. They will reason that industrial service is, after all, no less important as military service and ought to be rewarded not less generously.

Indeed, the catchword, "Soldiers of Industry," was used effectively in the campaign for old age pensions in England and the British Colonies more than ten years ago. The analogy between military and industrial service is not entirely exact, but it is close enough to make a strong popular appeal.

Another force that will accelerate the movement for health and other forms of social insurance is the pressure of socialism. The enactment of the British old age pension law in 1908 was admitted to a concession to socialism. Many conservative statesmen who disapproved this measure in principle nevertheless supported it because they believed that it would help to check the spread of socialism. The menace of a possible Bolshevik movement in this country to-day will help to incline thoughtful conservative opinion favorably toward proposals of social insurance. Revolutionary social movements in general cannot be checked by coercive and repressive measures alone. A positive and constructive programme of social reform is essential. The most effective line of defence against revolutionary movements directed against the very foundations of the present social system is the enactment of carefully considered measures that will help to remedy the evils and correct the abuses which have grown up around this system and to improve industrial and social conditions for the working masses.

Cannot Be Kept Down

The various conditions and tendencies which have been outlined briefly will combine to make powerfully for the success of the movement for health insurance. On the other hand, the forces aligned against this movement appear hardly strong enough much longer to hold it back from its goal. In the past the opposition has come from the private insurance interests, from employers in general, from some physicians, and even from some labor leaders. The insurance companies are fighting health insurance legislation precisely as they opposed workmen's compensation legislation. Their opposition will prove as unavailing in the present instance as it did in the former case. Whenever private interest attempts to block the path of social progress it has to yield. Incidentally, the hope may be expressed that private companies operated for profit will not be permitted to participate in underwriting the insurance under any health insurance law enacted by an American state. Such participation would impose needless expense upon employers and would give rise to dissatisfaction and complaint on the part of employees. The traditions and practices of the "old line" insurance companies are such as to unfit them for proper discharge of the great social trust involved in the administration of health insurance to workers.

The opposition from manufacturers is motivated by fear of the new burden which health insurance would impose upon industry. The dread on this score is naturally accentuated at a time when industry is confronted with serious problems of readjustment and reconstruction. It may be confidently asserted, however, that in the course of time the benefits accruing to employers through health insurance for their workers will far outweigh the money cost. Most employers opposed the enactment of workmen's compensation laws, but this attitude of opposition quickly changed under the successful operation of these laws to one of cordial approval and support. The same evolution of opinion on the part of employers may be expected to run its course with reference to health insurance. As has been previously pointed out, health insurance is an important measure for the conservation of labor, and its economic value to employers will come to be appreciated more generally under the unusual conditions in the labor market created by the war.

The opposition to health insurance from members of the medical profession has by no means been unanimous. Indeed, it may be said that the most public-spirited and far-sighted representatives of this profession have favored health insurance. Several state medical societies including those of Pennsylvania and Wisconsin, have endorsed the principle of health insurance. Dr. Alexander Lambert, president of the American Medical Association, has published a valuable report on the subject, as chairman of an investigating committee of the association. The health insurance movement is also supported by Miss Mary Beard, president of the National Organization for Public Health Nurses, and Dr. Andrew R. Warner, Cleveland, president of the American Hospital Association. So far as opposition exists within the ranks of the medical profession, it springs from fear that health insurance legislation would mean interference with private practice and restriction of physicians' fees. In this connection it may be stated with certainty that health insurance laws would prove financially beneficial to the medical profession, precisely as have workmen's compensation laws. Before the enactment of the latter injured employees in many cases went to free clinics for treatment and the physicians attending them received no fees. Physicians and hospitals rendering medical service under workmen's compensation laws are always paid for their services. The effect of workmen's compensation legislation has been to increase the income of the medical profession, and health insurance legislation would have the same effect even in a greater degree.

Such opposition to health insurance as has appeared in the ranks of organized labor springs from dislike of the compulsory feature of the proposed plan. Mr. Samuel Gompers, president of the American Federation of Labor, has expressed himself as opposed to health insurance for this reason. He thinks that a compulsory law would undermine trade union activity. "There must," he declares, "necessarily be a weakening of independence of spirit and virility when compulsory insurance is provided for so large a number of citizens of the state." At the present time, however, the voice of Mr. Gompers on this issue is almost that of one crying in the wilderness, for trade unions all over the country are aligning themselves solidly with the movement for health insurance. Mr. John Mitchell, chairman of the New York State Industrial Commission, strongly advocates health insurance. He states: "Public sentiment in this country is developing rapidly in favor of universal health insurance for wage earners, including maternity benefits. My own observation, through long experience with ravages of accident, trade, disease and sickness among working people and their families, leads me to the conviction that health insurance is even more important than workmen's compensation." Mr. James M. Lynch, a member of the same commission, is chairman of the committee on health of the New York State Federation of Labor, which will be the sponsor of the health insurance bill to be introduced at this session of the Legislature.

In conclusion, then, the early enactment of health insurance legislation in New York and other states seems assured, in view of the lessening opposition from certain quarters and the powerful combination of influences making for the success of the movement. These influences are the pressure of economic conditions; the need of labor conservation as a reconstruction measure, the growing popular inclination to look to the state for redress of economic and social ills, the contagion of government war risk insurance and the importance of adopting constructive measures of social reform as a counter check upon the spread of Bolshevik socialism.

Hetty Green's Famous Fight for the Howland Will

By John D. Anderson

EVER since 1865, or for more than half a century, one phase or another of the famous Sylvia Ann Howland will has been in the Federal and Massachusetts courts. Hetty Green's name has ever and always been associated with the matter, ever and always in a prominent way, and some of the interest in it was due to that fact. But taken all in all, first and last, the case is about as long drawn out, as interesting and as complicated a one as has ever been before our American courts.

Its beginnings take us back to the time when Miss Howland died at New Bedford in the year as noted. The woman known to the world as Hetty Green was then about twenty-nine years of age and was not married. The will of Miss Howland did not suit her niece, then Hetty Robinson, and the latter apparently set on foot ways and means of contesting it. Her method was by a bill in the Federal courts. It was contended by her that she and her aunt had agreed to make mutual wills; in case of the death of one, the survivor was to take the estate of the other. An attempt was also made to show that the will of Miss Howland was a forgery.

Miss Robinson's suit was directed against Edward D. Mandell, George Howland, Jr., and William A. Gordon, they being the trustees of the estate. The bill set up a specific contract for an exchange of wills, so Miss Robinson contended, and that neither should make any other will without notice to the other and the return in both cases of the other's will. Hetty was the niece and sole heir-at-law of Miss Howland and had previously inherited a considerable estate from her mother, Abby Robinson. An attempt was made in the trial which followed to show that Miss Howland was at variance with Mr. Robinson, the father of Hetty, and that the case was one where she had tried to exclude him from any interest or share in her property and also to secure the property of his only child, Hetty, if she died before Miss Howland. It was shown in the case that Hetty had made a will in pursuance of this agreement and had disinherited her father. Also it was shown that upon the making of wills they had been exchanged. But this was not all. Hetty's will went so far as to give her estate, in case of her aunt's death before hers, to charitable uses! It must be kept

in remembrance that Hetty was at the time only twenty-nine years of age, and perhaps more given to sentiment than later in life. No such will of hers was ever probated!

What the Court Found

The court found it to be a fact that there had been a part performance of this agreement. But upon the death of Miss Howland it was found that she had left as her last will quite another instrument. The paper was dated September 1, 1863, with a codicil dated some fourteen months later, and that by the terms of the instrument Hetty Robinson took only the income of the trust estate. At that time this had a value of about \$1,250,000, so that for the remainder of her life Miss Robinson was reasonably sure of an income of \$50,000 to \$60,000 a year. This did not suit her at all. She wanted the absolute control of the entire Howland fortune, hence the contest which she made through Sidney Bartlett, B. R. Curtis and P. C. Loring, three of the most able lawyers then in practice in New England. The trustees were represented by B. F. Thomas, T. D. Eliot and T. M. Steadson and the case was heard and decided by Circuit Justice Clifford.

This case, coming on for trial as it did at about the close of the Civil War, was in one respect affected, to a degree, at least, by a recent act of Congress, which provided "That in the courts of the United States there shall be no exclusion of any witness on account of color, nor in any civil action, because he is a party to, or has an interest in the issue tried." It was also decided in the case that "if the respondent have no personal knowledge of the matter set forth in any particular allegation of the bill of complaint, a denial by the respondent upon information and belief is sufficient to make it necessary for the complainant to prove the same."

Justice Clifford held that the apparent intent of the modifications in the Federal evidence act was intended to make the rules of evidence alike in both the state and United States courts and he also held that Miss Robinson could not testify herself as to transactions with or statements made by the aunt, and when he came to write the opinion felt only called upon to decide if the other evidence in the case was sufficient to warrant giving a decree in favor of Miss Robinson.

It was brought out in the case that the aunt had talked to the trustee, Gordon, along the same line as claimed by Miss Robinson in her bill and had said she would make another will but for the pledge to her niece. But she also said, in referring to her niece " . . . she dined me and teased me and gave me no peace till I did."

Hetty's testimony was to the effect that she had made a will dated September 19, 1862, and gave the instrument to her aunt in a yellow envelope and never saw it again until a day or two after the death of the aunt. Edward H. Green, who became her husband, confirmed this.

A Will Without A Way

There was also a good deal of testimony taken in the case, the purpose of which was to show that the will was a forgery, but it was upheld as genuine. Justice Clifford's final conclusion was that the evidence failed to show a contract—a promise for a promise—as claimed by the plaintiff; and that contracts of such a character without proofs cannot be enforced. He also said that there were very few decided cases on the main point of the case—the exchange of wills—and that those which had been before the courts the decisions were nearly equally divided, even when the facts were fully proved. He cited Judge Story as holding "that a contract to make mutual wills, if one of the parties has died having made a will according to the agreement, will be decreed in equity to be specifically executed by the surviving party, if he has enjoyed the benefit of the will of the other party." The court made much of the fact that the wills of aunt and niece were executed at different times, and also that Miss Howland did not know the contents of the paper handed her by Miss Robinson; that proof was wholly lacking on that point.

Every now and then Hetty Green made appeals to the court and stated that the trustees were not giving her so large an amount of income as the size of trust warranted. However, as she outlived her aunt about fifty-one years, not far from \$3,000,000 flowed to her as income from this trust, and make or lose in her investments, who received at least \$5,000 per month from her aunt's estate.

And now for another phase of the case. The aunt made a peculiar provision in her will. At the conclusion of the trust provision the instrument provided:

"And upon the decease of the said Hetty H. Robinson, I direct and order the said trustees and their successors in said office to pay over, distribute and divide the whole of said residuary estate to and among all the lineal descendants then living of my grandfather, Gideon Howland, and if all the lineal descendants aforesaid then living are in the same degree of kindred to the said Gideon Howland, they shall share the said estate equally and shall be paid in equal shares, otherwise they shall take according to the right of representation, and the said trustees shall pay them respectively such portions as shall according to the right of representation belong to them."

It is quite apparent from the reading of this clause of the will that all of the descendants of Gideon Howland would share in the estate, but in what proportion became the question. On this would depend the method of distribution, at the time of Hetty Green's death, of the \$1,600,000 in the hands of the trustees, who had several times changed by death and who are now Colonel Edward H. R. Green, the son of the late tenant; Henry B. Day, of Boston, and Oliver Prescott, of New Bedford.

Four Hundred Howlands

Gideon Howland, the ancestor, was born at Round Hills, South Dartmouth, Mass., in 1734 and died in 1823. He was a descendant of Henry Howland, who was a brother of John Howland, the Pilgrim. For more than 200 years the family home at Round Hills, and located not far from Salt-er's Point, has been in the Howland family and was owned by Mrs. Green at the time of her death. Gideon Howland had a large family. No less than eleven sons and daughters grew to manhood and womanhood and in turn left children. Not less than 430 persons now trace their ancestry to him, Hetty Green's son and daughter being among the number. The case is interesting from its very complexity, and affords evidence that the law is abundantly able to effect equitable division of estates, even in the absence of explicit testamentary instructions; in the present case, since the estate has been in the hands of trust-

tees for a little more than fifty years, the work of fixing the heirship at the present time has been the work of scholars and genealogists as well as lawyers.

The case went first before the Bristol County Probate Court, and there many views were expressed by the attorneys representing the various heirs as to the manner in which the estate should be distributed, but all agreed that a proper distribution of the trust fund was as if it had been the property of Gideon Howland and as if he had died without a last will, and testament on the date of Mrs. Green's death.

Problems in Long Division

In the preparation of their data and reports the trustees proceeded on the theory that the first or initial division of the trust property should be on the basis of forty-fifths, there having been forty-five grandchildren of Gideon Howland. Three were alive at the time Mrs. Green died. The reason for the course of the trustees was due to two Massachusetts decisions, which are to the effect that when there are no living members of any generation in descent from a grandchild, that generation should be passed over and the division made in equal shares among the next generation in which there are still living members.

Judge Hopkins in the Probate Court so decided, and while he did not write an opinion it was pointed out that the conclusion of Miss Howland's trust clause was not unlike the Massachusetts statute, which determines who shall take the personal property left by persons who do not leave wills. This provision is " . . . in equal shares to children and the issue of any deceased child by right of representation; and if there is no child of the intestate living at death, then to all other lineal descendants; if all descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation." The Supreme Judicial Court of Massachusetts has decided with the Probate Court on the division of forty fifths, and the estate is now in process of distribution. The shares in money range from about \$20,000 in an individual case down to about \$63.